

REMARKS AND ARGUMENTS

The primary reference, Koderia '738, teaches an automatic disease detecting apparatus wherein two parallel rows of probes, or pressure members 64, are individually and sequentially brought into contact with the back in order to study human organs.

There is a cam device 71 riding on guide rail 73 to sequentially raise each of the two rows of probes 64 into contact with the spinal area of the back, thus in this respect, Koderia '738, does massage the back only if one stretches the meaning of the term "massaging" to its ultimate elastic limits.

The secondary reference, Doria '860, teaches an electric massager having spaced vibrating fingers 8 and balls 11 for massaging one's body. The massager of Doria appears to be a hand held apparatus. Hence, the hand held massager device of Doria leads away from the primary reference which is not a hand held apparatus.

When the primary reference' Koderia, is combined with the secondary reference Doria, it immediately becomes apparent that there is missing from the record a valid teaching reference leading one skilled in the art to combine these two references in some heretofore unknown manner to come up with a new and unobvious massager apparatus set forth in the claims at bar.

The Lee '637 reference has a single upwardly extending body engaging member 2 reciprocating received within the illustrated housing and as best seen in Figure 2 thereof does not appear to be used for massaging the spinal area of one's back.

Applicant feels that extensive reconstruction of this reference would be necessary before it could measure up to anticipatory value.

It is well settled that a modifier cannot be modified prior to its use in modifying an apparatus for anticipation purposes. Accordingly, it is respectfully submitted that Lee '637 when combined with the other references of record fails to anticipate Applicant's contribution.

The Cheng-I, '225 reference is directed to a foot massager having a plurality of elements to for engaging the soles of one's feet. A rotary cam upsets or reciprocates the elements 2 in sequential order during rotation.

Applicant feels that considerable reconstruction is required to modify the other references of record and therefore for the reasons stated above in conjunction with Lee '637, fails to contain anticipatory value, no matter how this reference is combined, the resultant structure would not anticipate the claims in the instant application.

Accordingly, in view of the amendments and additional limitations proposed by the present amendments, favorable consideration and allowance of all of the claims now pending before the Examiner is respectfully solicited.

The remaining references have been reviewed by applicant who deems them inadequate, individually or collectively , to bridge that vast chasm set forth in 35 USC 103 that is required for anticipatory purposes.

Appreciation is expressed to the Examiner for his helpful comments in bringing this case to a favorable close by allowing the remaining amended and revised claims.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

For: James D. Mahan

A handwritten signature in cursive script, appearing to read "Marcus L. Bates", with a long horizontal flourish extending to the right.

By : Marcus L. Bates
Agent for Applicant
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